IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1944

FRED A HUGHES ET AL.,

Appellants,

vs.

CADDO PARISH SCHOOL BOARD ET AL.,

Appellees.

No._____

MOTION FOR ORDER TO STAY AND BRIEF IN SUPPORT THEREOF.

MOTION TO STAY

Come FRED A. HUGHES, H. CLAY GARRISON, J. STEVE VARLEY and WEYMAN H. ODEN, appellants in the above entitled and numbered action, and move and pray

the court to stay enforcement of the resolution of the Caddo Parish School Board of Caddo Parish, Louisiana, adopted September 6, 1944, under and pursuant to Act No. 342 of the Legislature of Louisiana for the year 1944, for the following reasons:

1. Upon granting the appeal in this case on November 4, 1944, the District Court denied appellants' motion for an order staying enforcement of said resolution and legislative enactment, assigning the following reason therefor (Tr. 88):

> "**** the court has been assured by the parties hereto that neither will do anything to disturb the status quo prior to January 1, 1945, thus giving appellants an opportunity, within the delay referred to, to apply to the Supreme Court for a stay."

2. The Caddo Parish School Board will enforce said resolution on January 1, 1945, by expelling or suspending appellants' children from the Byrd High School, Shreveport, Caddo Parish, Louisiana, because of their membership in high school fraternities and sororities, unless restrained from doing so by order of this court;

3. The enforcement of said resolution and legislative enacment during the pendency of this case, would render ineffective the appeal herein, defeat appellants' asserted rights, and cause them and their children irreparable loss and damage.

AUTHORITIES CITED IN BRIEF

FEDERAL DECISIONS

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FEDERAL STATUTES

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LOUISIANA STATUTES

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BRIEF IN SUPPORT OF MOTION TO STAY

Appellants' children are students of the Byrd High School of the city of Shreevport, Caddo Parish, Louisiana; and they are also members of Greek-letter fraternities and sororities located in said city, which organizations hold their meetings off the school grounds, out of school hours, and under supervision and control of their parents.

By Act No. 342 of 1944, the Legislature of Louisiana attempted to delegate to Parish school boards the power to prohibit Greek-letter fraternities and sororities in the public high schools of their respective parishes, which act we quote:

ACT NO. 342 of ACTS OF STATE OF LOUISIANA, SESSION OF 1944, PAGE 966.

"An act to prohibit fraternities, sororities and secret societies, as defined in this Act, in the public high schools of the State of Louisiana; to provide for the enforcement of this Act and to fix penalties for the violation hereof by any student of the Public high schools; to make it a misdemeanor for any person not enrolled in any public high school to solicit or encourage any pupil enrolled in any such public high school to join or to become a pledge to any high school fraternity, sorority or secret society, and to fix the penalty therefor; and to repeal all laws, or parts of laws, in conflict herewith.

Section 1. Be it enacted by the Legislature of Louisiana, That a public high school fraternity, sorority or secret society, as contemplated by this Act, is hereby defined to be any organization composed, wholly or in part, of public high school pupils, which seeks to perpetuate itself by taking in additional members from the pupils enrolled in such high school or schools on the basis of the decision of the membership

of such fraternity, sorority or secret society rather than upon the free choice of any pupil in the school.

Section 2. That after any parish school board, by a majority vote, shall prohibit fraternities or sororities in the high schools of such parish, it shall be the duty of the principals of such parish high schools of such parish to suspend or expel from said public high schools under their control any pupil of such public high school or schools who shall be or remain a member of, or shall join or promise to join, or who shall become pledged to become a member, or who shall solicit or encourage any other person to join, promise to join, or be pledged to become a member of, any such public high school fraternity or sorority or secret society, as defined herein; provided that after any principal or school board shall have taken any action authorized by this Act, such action shall be subject to the supervision and control of the State Board of Education.

Section 3. That it shall be unlawful from and after the passage of this Act for any person not enrolled in any public high school in any parish in which its school board has prohibited fraternities or sororities to solicit or encourage any pupil enrolled in any such public high school to join or to pledge himself or herself to become a member of any such public high school fraternity or sorority or secret society. Any person violating this section of this Act shall be guilty of a misdemeanor and shall be fined not less than Twenty-five Dollars nor more than Two Hundred Fifty Dollars for each and every offense.

Section 4. That if any section, subsection, clause, sentence, or phrase of this Act is for any reason held unconstitutional and invalid, such decision shall not effect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed this Act in each section, subsection, sentence,

clause or phrase thereof, irrespective of the fact that any one or more of its sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 5. That all laws, or parts of laws, in conflict herewith be and the same are hereby expressly repealed."

Under and pursuant to Act No. 342 of the Legislature of Louisiana for 1944, the Caddo Parish School Board adopted its resolution of September 6, 1944, prohibiting high school fraternities and sororities in the public high schools of Caddo Parish, which resolution we quote:

RESOLUTION OF CADDO PARISH SCHOOL BOARD OF SEPTEMBER 6, 1944.

"WHEREAS, in July, 1943, the Caddo Parish School Board appointed a special committee to investigate Greek letter fraternities and sororities and other secret societies in the public schools of this parish; and

Whereas, as a result of the investigation, report and recommendation of the above committee, the Caddo Parish School Board at its meeting of November 3, 1943, passed a resolution declaring said organizations inimical to the best interests of the public school system of this parish and making regulations relative to the participation in extra-curricular activities by pupils affiliated with said organizations; and

WHEREAS, in Suit No. 88,577, First Judicial District Court, entitled 'Amelia F. Cook et al. v. Caddo Parish School Board et al.' the District Court upheld the legality and validity of said resolution, which suit is now pending on the docket of the Supreme Court of Louisiana on an appeal taken by the plaintiffs therein; and

WHEREAS, in Suit No. 89,352, First Judicial Dis-

trict Court, entitled 'A. P. Crain et al. v. Caddo Parish School Board et al.' a similar lawsuit is pending, the outcome of which is to be decided by the above mentioned suit; and

WHEREAS, by Act 342 of 1944, the Legislature of Louisiana has declared in Section 2 thereof 'That after any parish school board, by a majority vote, shall prohibit fraternities or sororities in the high schools of such parish,' it shall be the duty of the principals of such parish high schools to suspend or expel pupils coming within the provisions of the said Act; and

WHEREAS, the Caddo Parish School Board now desires to avail itself of the provisions of the additional remedies set out in said Act 342 of 1944 and prohibit fraternities and sororities in the high schools of this parish, without in any wise abandoning its position, rights, or defenses in the above mentioned lawsuits now pending, particularly the one now on appeal before the Supreme Court of Louisiana, and with full reservation of all rights to prosecute said suits to final judgment, and with full reservation of all rights to enforce the resolution of this Board dated November 3, 1943, regardless of the outcome of any litigation or contest concerning the validity or enforceability of Act 342 of 1944;

NOW, THEREFORE, BE IT RESOLVED by the Caddo Parish School Board in legal session duly convened and assembled, a quorum being present and voting, that it does hereby avail itself of the additional remedies set out in the provisions of Act 342 of 1944 and accordingly it does hereby declare that fraternities and sororities and secret societies, as defined in said Act 342 of 1944, are hereby prohibited in the high schools of Caddo Parish, Louisiana, and the principal of each and every high school in this Parish is hereby authorized and directed to enforce this resolution and said Act 342 of 1944 in accordance with the terms and provisions of said legislative act.

BE IT FURTHER RESOLVED that the adoption of this resolution and the availing of the provisions of Act 342 of 1944 is not intended to be and shall not be deemed to be an abandonment by this Board of its position, rights, or defenses in Suits No. 88,577 and 89,322 on the docket of the First Judicial District Court, Caddo Parish, Louisiana, entitled 'Amelia F. Cook et al. v. Caddo Parish School Board et al.' and 'A. P. Crain et al. v. Caddo Parish School Board et al.', respectively, now pending, particularly the first named lawsuit now on appeal before the Supreme Court of Louisiana; and this Board fully reserves all rights to prosecute said suits to final judgment; and this Board reserves all rights to enforce the resolution of this Board dated November 3, 1943, regardless of the validity or enforceability of Act 342 of 1944."

Appellants attack the constitutionality of said legislative enactment and resolution, quoted supra, upon the following grounds material to the appeal in this case:

1. Said statute is violative of the 14th amendment to the Constitution of the United States in that it deprives plaintiffs and their children of vested rights without due process of law, abridges their privileges and immunities, deprives them of the equal protection of the laws, and attempts to grant special privileges to a class, limiting the privilege of free education to students who are not members of Greek-letter fraternities and sororities.

2. Said statute, as originally introduced in the House of Representatives, expressly declared that high school fraternities were inimical to the public good and to the welfare of the public high schools of Louisiana, but this language was stricken from said Act by the House of Representatives; that the Legislature, having failed to find said organizations detrimental to the general welfare, and, on the contrary, having in effect found otherwise, said statute has no legal basis on which to rest, and con-

stitutes a violation of the inherent personal rights guaranteed to every citizen by the State and Federal Constitutions.

Act No. 239 of the Legislature of Louisiana for the year 1944 provides for compulsory school attendance of children between the birthdays of seven and sixteen, Sections 1, 10 and 11 thereof being applicable to the appeal herein, which sections we quote:

ACT NO. 239 of ACTS OF STATE OF LOUISIANA, SESSION OF 1944, PAGE 711.

Section 1. "Be it enacted by the Legislature of Louisiana, That every parent, guardian, or other person residing within the State of Louisiana, having control or charge of any child or children between the ages of seven and fifteen years, both inclusive (i.e., from the seventh to the sixteenth birthday), shall send such child or children to a public or private day school under such penalty for noncompliance herewith as is hereafter provided."

Section 10. "Any parent, guardian, or other person who has control of a child, or children, and who shall violate the provisions of this Act shall be guilty of a misdemeanor and shall be subject to a fine not exceeding Ten ($10.00) Dollars or imprisonment not exceeding ten (10) days, or both, at the discretion of the court. Each day's unjustifiable absence shall constitute a separate offense. Visiting teachers, or other persons authorized to serve instead of visiting teachers as provided in Section 5 hereof, with the approval of the parish superintendent of education, shall have authority and it shall be their duty to file proceedings in court to enforce the provisions of this Act. All monies collected as fines for violation of this Act shall be remitted to the parish school board of the parish in which the violation occurred to be placed in the general school fund of the parish."

Section 11. "Visiting teachers, or other persons authorized to serve instead of visiting teachers as provided in Section 5 hereof, with the approval of the parish superintendent of education, and after written notice to the parent or guardian of a child, shall report any child who habitually absents himself from school to the Juvenile Court of the parish as a delinquent child, there to be dealt with in such manner as the judge of said court may determine, either by placing said delinquent in a home, public or private institution, where school may be provided for such child, or otherwise."

Appellants seek recognition and protection of civil rights guaranteed to them by the fourteenth amendment to the constitution of the United States, as construed by this court in the following cases:

Robert T. Meyer v. State of Nebraska,
67 L. Ed. 1042;

August Bartels v. State of Iowa,
67 L. Ed. 1047;

Walter M. Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary,
69 L. Ed. 1070;

Frank Hague v. Committee for Industrial Organization et al.,
83 L. Ed. 1423;

West Virginia State Board of Education v. Walter Barnette et al.,
87 L. Ed. 1628.

In Meyer vs. Nebraska, cited supra, the court said:

"The problem for our determination is wether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the 14th Amendment. 'No state . . . shall deprive

any person of life, liberty, or property without due process of law'."

"While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

In Pierce vs. Society of the Sisters of the Holy Names of Jesus and Mary, cited supra, the court approved the doctrine of Meyer v. Nebraska, saying:

"Under the doctrine of Mayer v. Nebraska, 262 U. S. 390, 67 L. Ed. 1042, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

During the pendency of the appeal herein, appellants are entitled to have stayed the enforcement of the statute and resolution alleged to infringe their constitutional rights.

Section 266 of Judicial Code
(28 U. S. C. A., Sec. 380);

Charles E. Hovey et al. v. Augustine R. McDonald et al., 27 L. Ed. 888;

Cotting v. Kansas City Stockyards Company, 46 L. Ed. 92;

Louisville & N. R. Co. v. Siler et al., 186 Fed. 176.

While the usual practice is for the lower court to stay enforcement of state statute pending appeal from judgment denying temporary restraining order, such relief may be granted by the Supreme Court, or any justice thereof.

Section 266 of Judicial Code
(28 U. S. C. A. Sec. 380);

Charles E. Hovey et al. v. Augustine R. McDonald et al. 27 L. Ed. 888;

Rail & River Coal Co. v. Yaple et al, 214 Fed. 273;

Cumberland Telephone and Tel. Co. v. Louisiana Public Service Commission, 67 L. Ed. 217.

In Cumberland Telephone and Telegraph Company vs. Louisiana Public Service Commission, cited supra, the court said:

> Without abdicating our unquestioned power to grant such an application as this, and conceding that exceptional cases may arise, we are generally inclined to refer applications of this kind to the court of three

judges who have heard the whole matter, have read the record, and can pass on the issue without additional labor."

After appellants filed in the District Court their motion for a stay order, the defendant school board assured the court that no attempt would be made to enforce the resolution in question prior to January 1, 1945. For that reason alone the court denied said motion, stating in the per curiam that appellants would have "an opportunity, within the delay referred to, to apply to the Supreme Court for a stay."

If appellants are entitled to a stay until January 1, 1945, as the District Court in effect held, it follows that the status quo should be preserved beyond that date and during the pendency of the appeal.

For the reasons assigned, we respectfully submit that enforcement of the statute and resolution in question should be stayed.

Wherefore, appellants pray that their motion be sustained, and for such other relief as may be just and proper in the premises.

Otis W. Bullock

December 4, 1944.

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